

No. 17,446

United States Court of Appeals
For the Ninth Circuit

NATIONAL UNION FIRE INSURANCE CO.,
Appellant,

vs.

LUISA SANTOS,

Appellee.

Appeal from Final Judgment of the
District Court of Guam
Civil No. 32-60

CLOSING BRIEF OF APPELLANT
NATIONAL UNION FIRE INSURANCE COMPANY

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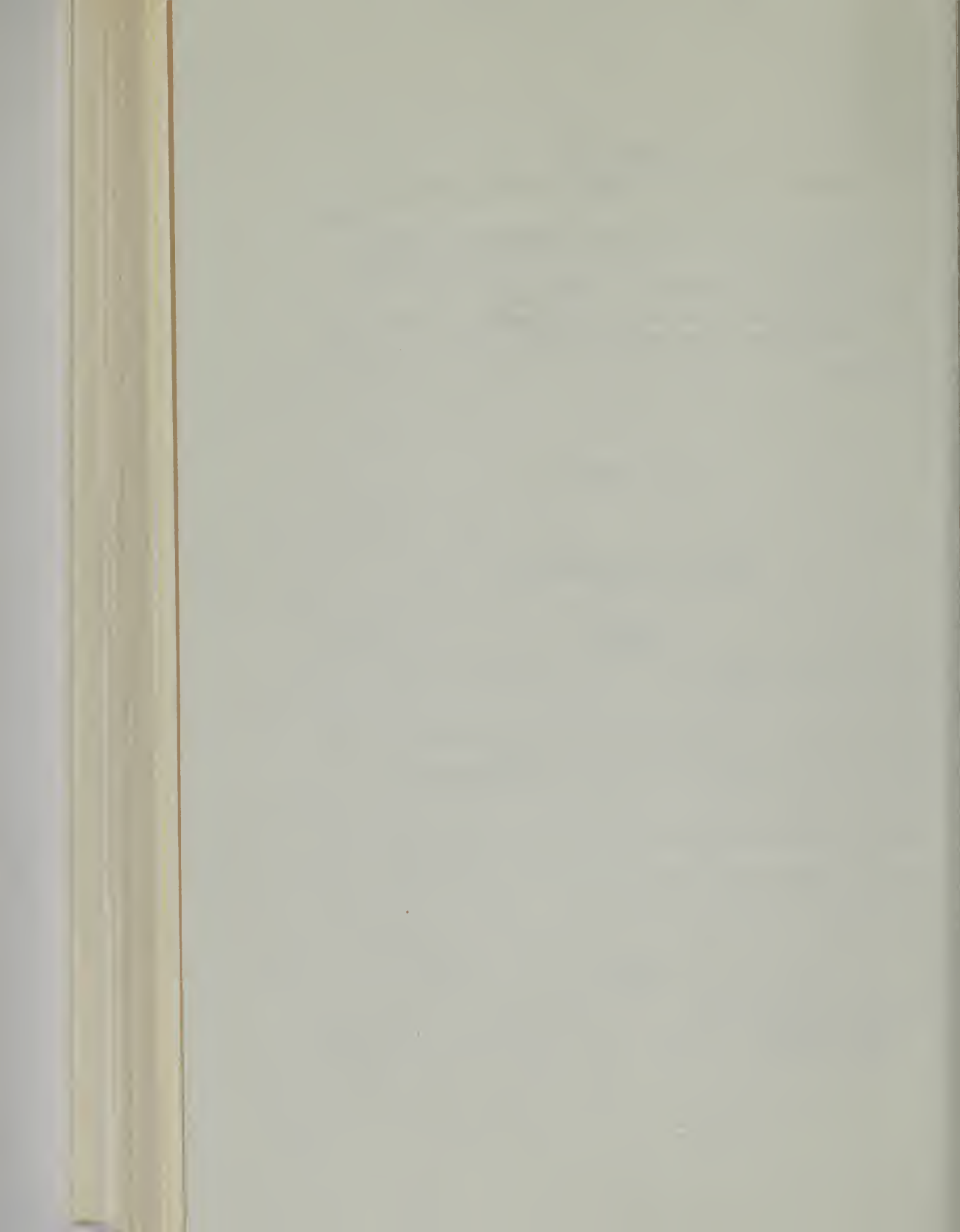


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**CLOSING BRIEF OF APPELLANT
NATIONAL UNION FIRE INSURANCE COMPANY**

**I. REFUSAL TO ALLOW APPELLANT TO EXAMINE ITS SOLE
WITNESS AS TO THE EXTENT OF HIS INTEREST IN THE
PROPERTY INSURED AND DESTROYED CONSTITUTED RE-
VERSIBLE ERROR**

Appellee seeks to sustain the decision below by utilizing a bootstrap argument; paraphrasing the Court below appellee inserts Government Code, Section 43408 and Arkansas Code, Section 66-515 into the following statement of the trial Court herein:

“Government Code of Guam §43407 was adopted without substantial change from an Arkansas statute, Ark. Stats. §66-514, and for that reason Arkansas decisions construing *that* Arkansas statute are persuasive . . .” (Emphasis added, T. 9.)

The Court below not only fails to refer to Government Code, Section 43408, with which we are concerned, but it fails to cite any supporting authority for the proposition that Section 43407 was adopted from the State of Arkansas; moreover appellant's research fails to reveal any legislative history as to Sections 43408, *or* 43407 of the Government Code of Guam. It is therefore submitted that decisions from the State of Arkansas should not be regarded with any special authoritative significance.

In construing Section 43408 of the Government Code of Guam it should be borne in mind that to the extent the insurance exceeds the insured's insurable interest the contract of insurance becomes merely a wagering contract. As the Court stated in *Osborne v. Security Ins. Co.* (1957), 155 Cal. App. 2d 201, 205:

“The rule that the purchaser of an insurance policy must have an insurable interest in the subject matter . . . pervades the entire field of insurance law . . . The object to be obtained by this rule, the reason for its being, is avoidance of wagering contracts . . .”

Such a failure of the insured to possess an insurable interest in the insured property vitiates the contract of insurance. *Napavale, Inc. v. United Nat. Indem. Co.* (1959), 169 Cal. App. 2d 119, 124.

For this Court to allow appellee to recover for more than the interest appellee possessed in the property destroyed would encourage wagering contracts and promote fraud and arson. It is therefore submitted that *Lighting Fixture Supply Co. v. Pacific Fire Ins.*

Co. (1932), 176 La. 499, 146 So. 35, and *Lyles v. National Liberty Ins. Co.* (1938), 182 So. 183 (cited at pages 7 and 8 of Appellant's Opening Brief) should be followed in construing Section 43408 of the Government Code of Guam.

II. APPELLEE WAS ERRONEOUSLY ALLOWED TO RECOVER FOR PERSONAL PROPERTY OF HER MARRIED MINOR DAUGHTER

While appellee correctly cites *Oslund v. State Farm Mutual Auto. Ins. Co.* (9th Cir., 1957), 242 F. 2d 813, 815-816, for the proposition that a motion for directed verdict must be interposed to reserve for appeal the question of sufficiency of the evidence, the problem presented herein is not technically a question of sufficiency, although inadvertently characterized as such in Appellant's Opening Brief at page 11. Rather the evidence and verdict affirmatively reveal that appellee was allowed to recover for the loss of property in which she possessed no insurable interest—her married daughter's clothing. Appellee's lack of insurable interest in such clothing precluded appellee of any right to recover for their loss.

CONCLUSION

It is respectfully submitted that the judgment appealed from must be reversed since as to the real property appellee may have recovered more than her insurable interest therein; and, it affirmatively appears that appellee recovered for the loss of personal property in which she did lack an insurable interest.

Dated, San Francisco, California,
March 19, 1962.

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